

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

AL LYDEN,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DISM-01-0054

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and RENÉ EWING, Member. The hearing was held at the Office of the Attorney General, W. 1116 Riverside Avenue, Spokane, Washington, on March 5 and 6, 2002. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Al Lyden was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty and insubordination. Respondent alleges that Appellant failed to follow a written directive that he return to work.

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2 1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.
4 Dep't of Social & Health Services, PAB No. D94-025 (1995).

5 6 **II. FINDINGS OF FACT**

7 2.1 Appellant Al Lyden was a Financial Services Specialist 3 and permanent employee for
8 Respondent Department of Social and Health Services. Appellant and Respondent are subject to
9 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
10 Appellant filed a timely appeal with the Personnel Appeals Board on July 9, 2001.

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12 2.2 By letter dated June 11, 2001, Kathleen L. Shober, Regional Administrator for Region 1
13 Community Services Division, informed Appellant of his dismissal effective June 30, 2001. Ms.
14 Shober charged Appellant with neglect of duty and insubordination, specifically alleging that
15 Appellant disregarded a written directive given to him by Robert Absolor, Community Services
16 Office Administrator, when he failed to return to work by no later than December 1, 2000 and failed
17 to provide notification of his continued absence.

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19 2.3 Appellant began his employment with the Department of Social and Health Services
20 (DSHS) in 1988. On June 1, 1999, Appellant was assigned to work at a Community Services
21 outstation office at the Sacred Heart Medical Center as part of a contractual arrangement between
22 the hospital and DSHS in which DSHS provided staff to process social and financial services
23 applications. Appellant processed financial services requests at the hospital, however, he continued
24 to attend staff meetings and report to Financial Services Supervisor Pete Casimir at the Central
25 CSO. Appellant also served as the Central CSO shop steward representing the Washington
26 Federation of State Employees.

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2 2.4 In the spring of 1999, numerous female employees at the Central CSO informed Appellant
3 that a male coworker was harassing them and that management was failing to take action on their
4 complaints. In his capacity as a shop steward, Appellant presented the complaint to his supervisor,
5 Mr. Casimir. In May 1999, Mr. Casimir informed Appellant that the issue had been investigated
6 and addressed. However, in the subsequent weeks, Appellant continued to report to Mr. Casimir
7 that the female employees did not feel that their complaints had been taken seriously, that
8 management had failed to initiate an investigation and had not effectively dealt with the allegations
9 of harassment.

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11 2.5 On July 9, 1999, Appellant met with Mr. Casimir and Bob Absolor, the Spokane Central
12 CSO Administrator, to discuss the employees' complaints of harassment and hostile work
13 environment. Mr. Absolor subsequently conferred with Mr. Casimir, who was concerned that the
14 initial complaint had expanded into a larger array of complaints than initially reported. Mr. Absolor
15 determined that it would be necessary for the employees to formalize their complaints in written
16 format.

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18 2.6 During a meeting held on July 26, 1999, Mr. Absolor advised Appellant that the issue
19 regarding the alleged harassment of employees had been addressed and that he should advise the
20 complainants to put their specific allegations in writing so the department could follow up on each
21 specific item to determine the facts. Appellant had concerns that management was being
22 unreceptive to the claims of hostile work environment that he brought forward on behalf of his
23 coworkers and he continued to pursue the matter. However, the employees submitted no written
24 complaints.

1 2.7 Appellant testified that following the July 9, 1999 meeting, Mr. Casimir began to scrutinize
2 the quality of his work and to blame him for errors made by another employee. Appellant believed
3 that Mr. Casimir was harassing him because of his role in reporting the harassment complaint.
4 However, during the time period of June-August 1999, the department was implementing a “clean
5 sweep” to thoroughly audit food stamp cases for accuracy. As a result, all food stamp applications
6 were under intense scrutiny and the casework of all Financial Services employees was
7 comprehensively examined. A preponderance of the evidence did not establish that Appellant or
8 his work product was exclusively singled out between June and August 1999.

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10 2.8 Beginning August 12, 1999, Appellant was absent from work on annual leave. Appellant
11 testified that he scheduled vacation leave on the recommendation of his union representative
12 because of the alleged ongoing conflict between Appellant and Mr. Casimir. On August 23, 1999,
13 Appellant returned to work. However, at approximately 1 p.m., Appellant left work on sick leave to
14 visit his doctor. On August 26, 1999, Appellant’s shop steward, Beverly Smith, provided the
15 department with a doctor’s note regarding Appellant’s medical leave. Appellant testified that he
16 went on medical leave because the stress he experienced at work was exacerbating an existing
17 medial condition.

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19 2.9 During Appellant’s absence, Mr. Casimir assigned other employees to process financial
20 services applications at the hospital. Mr. Casimir subsequently met with Sacred Heart Medical
21 Center representatives to discuss the hospital’s need to have the hospital financial services position
22 filled on a consistent basis. By memorandum dated October 8 1999, Mr. Casimir notified
23 Appellant that his position was being reassigned from Sacred Heart Medical Center back to the
24 Central CSO office due to the program needs.

1 2.10 By letter dated October 22, 1999, Mr. Absolor directed Appellant to report to work by
2 October 26, 1999, or in the alternative, to contact Mr. Casimir and provide him with a written
3 doctor's statement indicating why he could not return to work. At Appellant's request, Mr.
4 Absolor's subsequent communications with Appellant occurred in written form and/or through
5 Appellant's union representative. Appellant continued to be absent through the remainder of 1999.

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7 2.11 On January 13, 2000 Appellant's physician, Dr. John H. Edwards with the Department of
8 Veterans Affairs Medical Center, indicated in writing that Appellant was not released to work until
9 April 1, 2000.

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12 2.12 On April 5, 2000, Dr. Edwards wrote a medical statement which stated that Appellant "had
13 been unable to work due to situational stress, which exacerbated underlying medical conditions.
14 These medical conditions render Mr. Lyden unable to work when subjected to stressors in the work
15 place." Dr. Edward also indicated that Appellant could return to work in a "stable work
16 environment" to "any position other than his current assignment."

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18 2.13 By letter dated May 11, 2000, Mr. Absolor informed Appellant, in part:

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20 Dr. Edwards' indicated in his letter of April 5, 2000, you are able to return to
21 work. You have been assigned and will be returning to different work
22 assignments than before you began taking leave in August. Since you have been
23 released to return to work, you are directed to report to work on May 15, 2000. If
24 you are unable to return to work due to medical reasons, you must provide a
25 doctor's statement indicating the period of time you will be unable to work. The
26 last medical statement we have indicated you were unable to return to work until
April 1, 2000. . . .

1 2.14 In the ensuing months, the department, through Appellant's union representatives, continued
2 to engage in efforts to return Appellant to work. On September 8, 2000, Dr. Edwards, at
3 Appellant's request, wrote a clarification memo to his April 5, 2000 medical statement regarding
4 Appellant's return to work. Dr. Edward wrote, "My intentions were to recommend that Mr. Lyden
5 be allowed to return to work to a position not under his current supervisory chain."

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7 2.15 On October 25, 2000, Appellant, his union representative, Mr. Absolor and other agency
8 representatives held a teleconference to discuss Appellant's return to work. During the conference,
9 Appellant's union representative asked that Appellant be reassigned within the Spokane area to an
10 equivalent position within DSHS but outside the chain of command of Pete Casimir and Robert
11 Absolor. Specifically, Appellant's union representative requested that the agency accommodate
12 Appellant's "disability" by placing Appellant under a different chain of command to alleviate the
13 situational stress created for Appellant by working under Mr. Casimir and Mr. Absolor's
14 supervision. Appellant was also requesting a list of agency vacancies for the Spokane region.

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16 2.16 The agency's response was that the Central CSO could provide Appellant with a work
17 environment that was "non-hostile, free from retaliation." However, the management did not agree
18 to remove Appellant from his supervisory chain of command. Although both parties engaged in
19 discussions about Appellant's "disability" and the reasonable accommodation process, there is no
20 evidence that Appellant was diagnosed with a disability that prevented him from performing the
21 essential duties of his position with or without accommodation.

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23 2.17 On November 27, 2000, Mr. Absolor directed Appellant to return to work by no later than
24 December 1, 2000. Appellant did not report to work as directed, and Mr. Casimir initiated a
25 Conduct Investigation Report. In a response dated December 19, 2000, Appellant wrote that he
26 would not report to work until he received a determination from the Division of Access and Equal

1 Opportunity (DAEO) regarding an accommodation request and a discrimination investigation he
2 filed against the department. Appellant further reiterated the he would “continue to follow the
3 instructions prescribed by my doctor not to return to the hostile work environment created by
4 Region 1 Administration.”

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6 2.18 Kathleen Shober, Regional Administrator for Region 1 Community Services Division, was
7 Appellant’s appointing authority when she terminated Appellant effective June 30, 2001. Ms.
8 Shober felt that termination was the appropriate sanction because Appellant had not reported to
9 work for over a year and had refused to meet with Mr. Casimir and Mr. Absolor to discuss his
10 return to work. Ms. Shober testified that Appellant’s claims of hostile work environment were
11 investigated and found to be without merit, and she concluded that Appellant’s request for a new
12 supervisor was not reasonable. Ms. Shober concluded that Appellant’s refusal to comply with a
13 final directive to return to work warranted termination.

14 15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Respondent argues that this case is about an employee who refused to work for his
17 supervisors. Respondent argues that Appellant presented no proof of a disabling condition and that
18 there was no evidence to support that Appellant was being subjected to harassment. Respondent
19 asserts that Appellant was encouraged to engage in talks with the department about ways to reduce
20 Appellant’s stress and how best to accommodate him and make his workplace comfortable.
21 Respondent argues, however, that Appellant refused to report to work despite the department’s
22 repeated attempts to get Appellant to return to work, which included a different job assignment.
23 Respondent further argues that it is not reasonable, even assuming that a disabling medical
24 condition exists, for an employee to ask for a new supervisor. Respondent argues that there was
25 nothing the agency could do to get Appellant to return to work and that the termination should be
26 affirmed.

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2 3.2 Appellant asserts that it was his duty as a shop steward to bring forward his coworkers
3 concerns that a male lead worker was subjecting them to a hostile work environment. Appellant
4 argues that whether these allegations were true or not, the administration had an obligation to
5 address and effectively deal with them. Appellant asserts that as a result, Mr. Casimir and Mr.
6 Absolor yelled at him and subjected his work to unwarranted scrutiny and criticism. Appellant
7 asserts that his work conditions became so unbearable that he was unable to continue working under
8 Mr. Casimir's supervision. Appellant argues that the department removed him from his position at
9 hospital, transferred him back to the Central CSO and continued to require that he work under the
10 same supervisor. Appellant asserts his claims of harassment were never investigated and that no
11 resolution of the hostile work environment issues was reached. Appellant asserts that he went on a
12 medical leave of absence because the stress exacerbated his existing medical condition and caused
13 him dangerous stress. Appellant argues that while on leave, he was faced with repeated threats that
14 he would be terminated if he did not return to work. Appellant denies that he walked off the job,
15 asserts that the termination was not justified, and asks to be reinstated to his position
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17 IV. CONCLUSIONS OF LAW

18 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
19 herein.
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21 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
22 the charges upon which the action was initiated by proving by a preponderance of the credible
23 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
24 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
25 Corrections, PAB No. D82-084 (1983).
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1 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
2 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
3 of Social & Health Services, PAB No. D86-119 (1987).

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5 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
6 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
7 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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9 4.5 Respondent has proven by a preponderance of the credible evidence that Appellant
10 neglected his duty and was insubordinate when he failed to report to work as directed in the October
11 27, 2000 memo. There is no credible evidence to show that the agency discriminated, harassed, or
12 retaliated against Appellant or subjected his work to disproportionate scrutiny for his role in
13 bringing forth his coworkers' claims of hostile work environment. Appellant's refusal to return to
14 work was unreasonable under the circumstances and his actions were not mitigated. Under the
15 totality of the proven facts and circumstances, termination is appropriate and the appeal should be
16 denied.

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18 **V. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Al Lyden is denied.

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21 DATED this _____ day of _____, 2002.

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23 WASHINGTON STATE PERSONNEL APPEALS BOARD

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25 Walter T. Hubbard, Chair
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René Ewing, Member